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101ST CONGRESS
2d Session

SENATE

REPORT
101-392

THE OMNIBUS TERRITORIES ACT OF 1990

JULY 25 (legislative day, JULY 10), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2841]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2841) to authorize the appropriation of $2,500,000 to complete the renovation of the Guam Memorial Hospital, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Designate the existing text as Title I, and at the end of the bill, add the following new Title II:

TITLE II—DISPOSAL OF EXCESS FEDERAL LANDS ON GUAM

SEC. 201. DISPOSITION OF TRANSFERRED REAL PROPERTY.

(a) ESTABLISHMENT OF COMMISSION.—As a prerequisite for the transfer of excess lands under section 202, the Government of Guam must enact legislation which—

(1) establishes an excess lands commission the purpose of which shall be to dispose of lands received pursuant to this Title to promote economic self-sufficiency and private sector development in Guam;

(2) provides that the Commission shall have the power—

(A) to hold all right, title, and interest in and to all real property transferred under section 202;

(B) to dispose of real properties or interests therein transferred under section 202 in accordance with the laws of Guam and the priorities set

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forth in the enabling legislation as required pursuant to paragraph 4 of this subsection;

(C) to resolve conclusively all issues related to lands transferred under section 202 and without appeal to any other agency or court of law except as otherwise expressly provided by the laws of Guam; and

(3) provides that the Commission shall make annual reports to the Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House of Representatives, on or before February 15 of each year, on the disposition of lands transferred pursuant to this title and on the activities and actions of the Commission during the reporting period; and

(4) establishes priorities for the distribution and disposal of the excess lands.

(b) UNITED STATES PERSON.—(1) As used in this title, the term "United States person" means—

(A) any citizen, national, or permanent resident alien of the United States,

(B) any partnership, corporation, or other entity organized under the laws of the United States, any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States, in which citizens, nationals, or permanent resident aliens of the United States beneficially own or control (directly or indirectly) more than 50 percent of the outstanding voting securities or other voting interest of the partnership, corporation, or other entity, or

(C) the government of any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

(2) A partnership, corporation, or other entity described in paragraph (1)(B) shall be presumed to be controlled by individuals who are citizens, nationals, or permanent resident aliens of the United States if—

(A) such individuals are a majority of the partners of the partnership or a majority of the members of the board of directors of the corporation or other entity; or

(B) such individuals have the authority to appoint a majority of the members of the board of directors of the corporation or other entity.

(c) OWNERSHIP OF UNITED STATES PERSONS OF LAND HELD IN TRUST.—For the purposes of this section, the term "ownership of United States persons" means, in the case of a portion of land held in trust, the legal and the beneficial interests of such trust must be held by United States persons.

SEC. 202. TRANSFER OF EXCESS FEDERAL LAND LOCATED ON GUAM.

Except for lands within the boundaries of the War in the Pacific National Historic Park, the Administrator of Gen-

eral Services shall transfer, without consideration and without encumbrances, all right, title, and interest of the United States (together with any improvements thereon) in and to any real property on Guam which is determined to be excess under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) to the Commission to be established by the laws of Guam for disposition in accordance with section 201. Any property subject to this title shall not be subject to Public Law 100-77 (101 Stat. 482). Title to any real property conveyed pursuant to this title shall revert to the United States if the Commission attempts to convey or otherwise transfer ownership of such property other than to a United States person.

SEC. 203. REPEAL OF CERTAIN CONDITIONS ON LAND TRANSFERRED TO GUAM.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782), as amended, is hereby repealed.

2. Amend the title so as to read: "The Omnibus Territories Act of 1990.".

PURPOSE

The purpose of S. 2841 is to authorize $2.5 million in appropriations to complete renovation of the Guam Memorial Hospital.

BACKGROUND

In 1983, the Joint Commission on Accreditation of the Health Care Organizations (JCAHCO) revoked accreditation of the Guam Memorial Hospital due to numerous deficiencies. Previous Federal funds have been used to help correct these deficiencies. However, additional funding is needed to complete the remaining renovations necessary to meet anticipated needs. The hospital cannot apply for, nor obtain, facility accreditation until this renovation is completed. Thus, funding to complete the necessary renovations is urgently needed to return the facility to full service.

LEGISLATIVE HISTORY

S. 2841 was introduced on July 11, 1990, by Senator McClure, at the request of the Administration. On July 18, 1990, the Committee ordered the measure reported with amendments.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 18, 1990, considered S. 2841, and by a unanimous vote of a quorum present recommends that the Senate pass S. 2841 if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford*	

Mr. Bradley
Mr. Bingaman*
Mr. Wirth
Mr. Conrad
Mr. Heflin
Mr. Rockefeller
Mr. McClure
Mr. Hatfield*
Mr. Domenici
Mr. Wallop*
Mr. Murkowski
Mr. Nickles
Mr. Burns
Mr. Garn*
Mr. McConnell

* Indicates vote by proxy.

Committee Amendment

The first Committee amendment would designate the language of S. 2841, as introduced, as title I; and it would add a new title II, to provide for the disposal of excess Federal lands on Guam. The issue of the disposal of excess Federal lands on Guam is the subject of another bill currently before the Committee, S. 780, introduced on April 13, 1989. The second Committee amendment would amend the title of S. 2841 to read "The Omnibus Territories Act of 1990".

The issue of the disposal of excess Federal lands in Guam has been before the Committee in proposed legislation since 1984, and its origins, as an issue in United States-Guam relations, is usually traced to the period immediately following the liberation of the island in 1944.

As U.S. forces cleared Guam of Japanese occupation forces, military lands were acquired as necessary to continue operations against Japan. Many local landowners expected their lands to be returned following the war with Japan. However, Defense Department needs during the cold-war era increased Federal holdings to approximately one-third of the island, or some 70 square miles.

In 1986, the U.S. military reassessed its land needs on Guam and determined that 3,548 acres were excess to their needs. Since that time, releases and withdrawals have reduced the estimate of excess lands to approximately 3,000 acres.

The first Committee amendment would establish a process for the disposal of these lands, and other lands that may be declared excess in the future.

Section-by-Section Analysis

TITLE I

Authorizes the appropriation of $2.5 million to make renovations to the Guam Memorial Hospital. These funds have been requested by the Administration in the fiscal year 1991 budget and they would be the final increment needed to finance the total project cost of $25 million. The total Federal cost share will then total $8 million.

TITLE II

Section 201. Requires that, as a prerequisite for the transfer of excess Federal lands, the Government of Guam must enact legislation which: (1) establishes an excess lands commission, (2) provides the commission with specific powers to receive and dispose of excess Federal lands, (3) requires that the commission submit annual reports to Congress on its activities, and (4) establishes priorities for the disposal of the lands.

The Committee amendment defines the purpose of the Commission to be "to promote economic self-sufficiency and private sector development in Guam". This statement of purpose underscores the Committee's intent that these lands be used to further the Federal policy of promoting economic self-sufficiency and private sector development in the territories. The Committee does not intend that public uses of these lands be precluded. However, the Committee does not intend that these lands be transferred to the Government of Guam unless there is a compelling need for these lands by the Government of Guam, and that current Government of Guam lands cannot meet that need.

The Commission may, if authorized by the laws of Guam, decide to lease some of these lands, and thus protect them from alienation by non-U.S. persons, while making them available for private sector development.

The Committee has included a requirement that the Commission report annually on its activities. The Committee will review these reports to determine whether amendments to the law are necessary to further support the intention of the Committee to dispose of these lands so as to promote private sector development in Guam.

The Committee recognizes that decisions on the disposal of specific parcels of land are best made at the local level. The establishment of a local commission with this decisionmaking authority is consistent with the federal policy to promote local self-government.

The Committee also recognizes that the Legislature and the Commission may decide to identify former landowners as having priority in the disposal of these lands. However, this title shall not affect, nor be interpreted to affect, any claim of any person regarding any Federal, or formerly Federal lands in Guam.

Section 202. Directs the transfer of all United States interest in these and any other real property on Guam which is determined to be excess under the Federal Property and Administrative Services Act of 1949.

In this section, the phrase "without encumbrances" means any new encumbrances created after the date of the transfer of these lands to the Commission. All existing encumbrances, such as for utility rights-of-way, will remain intact and shall be included in the deeds upon transfer of these lands to the Commission, and in the deeds as disposed of by the Commission

Section 202 also waives the applicability of Public Law 100-77 (101 Stat. 482) to these transfers because that law, the purpose of which is to provide shelter to the homeless, is not necessary to meet the relatively limited problem of homelessness on the island of Guam.

Finally, section 202 would require that any attempt by the Commission to convey, or otherwise transfer, ownership of these lands to other than a United States person shall trigger the reversion of these lands to the United States.

Section 203. Would repeal section 818(b)(2) of Public Law 96-418, as amended, and would thereby remove the condition attached to the lands conveyed pursuant to section 818(a) of Public Law 96-418. The text of section 818 is set forth in the "Changes-in-Existing Law" portion of this report.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 23, 1990.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2841, the Omnibus Territories Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, *Director.*

Congressional Budget Office—Cost Estimate

1. Bill number: S. 2841.
2. Bill title: Omnibus Territories Act of 1990.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on July 18, 1990.
4. Bill purpose: S. 2841 would authorize the appropriation of $2.5 million for Guam to complete the renovation of a hospital. For 1990, the Congress did not appropriate any funds for construction in Guam, but the President has requested the $2.5 million for this purpose for 1991.

In addition, S. 2841 would require the federal government to transfer surplus federal land on Guam to a commission on land use to be established by the Guam government. The commission would receive, hold, and dispose of the property. The bill also would remove a requirement that the federal government receive any profits from the sale or development of the Apra Harbor property.

5. Estimated cost to the Federal Government:

[By fiscal year, in millins of dollars]

	1991	1992	1993	1994	1995
Authorization level	2.5				
Estimated outlays	1.4	0.8	0.3		

The costs of this bill fall within budget function 800.

Basis of estimate: This estimate assumes that the amount authorized for the Guam hospital will be appropriated. The estimate of outlays is based on historical spending patterns for similar programs.

The provisions dealing with surplus federal land could result in lower receipts to the federal government, since without S. 2841 the government could sell the property. Similarly, if Guam developed Apra Harbor, some profits could accrue to the federal government in the absence of this bill. However, no receipts from surplus land or harbor development are expected in the near future, and we have no basis for predicting the timing or magnitude of any later receipts that could be forgone under this bill.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn and Marta Morgan.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2841.

The measure would not impose any additional Government-established standards or significant economic responsibilities on private individuals. Little, if any, additional personal information would be collected as a result of enactment of this measure. Therefore, there would be no impact on personal privacy from the bill.

There would be an increase in paperwork at the local level as a result of the creation of the Commission. In addition; the measure would require the Commission to submit an annual report to Congress.

Executive Communications

The pertinent communications received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 2841 and S. 780, included as title II of S. 2841, are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, June 5, 1990.

Hon. J. Danforth Quayle,
President of the Senate,
Washington, DC.

Dear Mr. President: Enclosed is draft legislation "To authorize the appropriation of $2.5 million to complete the renovation of the Guam Memorial Hospital."

We recommend that this draft legislation be introduced, referred to the appropriate committee and enacted.

In 1983, the Joint Commission on Accreditation of Health Care Organizations (JCAHCO) revoked accreditation of the Guam Memorial Hospital due to numerous building and life safety code violations, and several patient care and administrative policy deficiencies. Using previously appropriated Federal and local funds, Guam has begun renovation to correct physical plant and life safety code deficiencies and to procure temporary administrative offices. It also recently awarded a contract for major renovation and facility expansion construction. However, additional funding is needed to complete remaining renovation necessary to meet anticipated future needs. Until this renovation is completed, the hospital cannot apply for nor obtain facility accreditation. JCAHCO survey practices require full occupancy of the facility prior to survey, and do not provide for consideration of planned improvements or construction.

If appropriated, the $2.5 million, which is contained in the President's 1991 budget, will allow construction and renovation of additional hospital facilities needed to consolidate services and rectify the cited deficiencies that led to loss of accreditation. This will include remodeling and expanding the intensive care unit, emergency room and surgical suites. It will enable the Guam Memorial Hospital to provide integrated acute care services in a safe physical plant where quality care and services are provided in accordance with national standards. Together with local appropriations, the $2.5 million will complete the hospital renovation. Guam is paying for two-thirds of the project. The Office of Management and Budget has advised that enactment of this legislation would be in accord with the program of the President.

Sincerely,

STELLA GUERRA,
Assistant Secretary.

Enclosure.

A BILL To authorize the appropriation of $2.5 million to complete the renovation of the Guam Memorial Hospital

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated $2,500,000 to complete the renovation of the Guam Memorial Hospital.

THE SECRETARY OF THE INTERIOR,
Washington, DC, June 19, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your letter of May 18, 1990, concerning the Administration's views on the May 24, 1990 proposed substitute for S. 780, legislation to provide for the disposition of excess Federal land on Guam, I am pleased to inform you that the Administration would support the proposed substitute, a copy of which is enclosed, if amended as described below.

As you know, the Department of the Interior, with assistance from the Department of Justice, has been working to develop compromise language with Guam Delegate Ben Blaz on key provisions

of the legislation. S. 780, as amended, resolves most of the Administration's major concerns with the bill, regarding the proper mechanism to transfer ownership of the land and the ultimate disposition of the properties on Guam.

Recently, however, it was brought to our attention that Section 2(a)(1)(D) would prohibit the free alienation of lands after the transfer from the United States Government to Guam. Specifically, Section 2(a)(1)(D) would establish a land commission with the power to provide that if any portion of any real property transferred pursuant to section 1 does not remain in ownership of United States persons, such portion shall revert to the commission. "United States persons" is defined in S. 780 as "any citizen, national, or permanent resident alien of the United States" or U.S. owned commercial entity organized under U.S. laws. This provision of S. 780 would preclude foreign individuals or foreign-controlled corporations operating in the United States from acquiring ownership of the Federal land being transferred to Guam in accordance with the bill.

The Organization for Economic Cooperation and Development (OECD) Code of Liberalization of Capital Movements, to which the United States is bound, prohibits such provisions because they discriminate against foreign interests. The OECD Code provides for the progressive abolishment of "restrictions on movements of capital to the extent necessary for effective economic cooperation." In addition, the non-binding OECD National Treatment instrument exhorts the United States and other OECD member nations to provide "no less favorable" treatment for foreign-owned firms after establishment than locally-owned firms. The United States-Canada Free Trade Agreement requires the United States to provide national treatment to Canadian investors in the United States and its territories, including for the purchase of land. Therefore, the Administration recommends that Section 2(a)(1)(D) be deleted.

Furthermore, we recommend the following phrase be added at the beginning of Section 1, prefacing the first sentence: "Except for lands within the boundaries of the War in the Pacific National Historical Park,". This would protect the lands in the national park on Guam.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to submission of this report.

MANUEL LUJAN, Jr.

Enclosure.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 780

Strike all after the enacting clause and insert the following:

SECTION 1. TRANSFER OF EXCESS FEDERAL LAND LOCATED ON GUAM.

The Administrator of General Services shall transfer, without consideration and without encumbrances, all right, title, and interest of the United States (together with any improvements thereon) in and to any real property on Guam which is determined to be excess under the

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) to the commission to be established by the laws of Guam for disposition in accordance with section 2. Any property subject to this Act shall not be subject to Public Law 100–77 (101 Stat. 482).

SEC. 2. DISPOSITION OF TRANSFERRED REAL PROPERTY.

(a) ESTABLISHMENT OF COMMISSION.—As a prerequisite for Guam to receive the transfer of excess lands under section 1, the Legislature of Guam, with the concurrence of the Governor of Guam, must—

(1) establish an excess lands commission with the power—

(A) to hold all right, title, and interest in and to all real property transferred under section 1;

(B) to transfer to United States persons real properties transferred under section 1 in accordance with the laws of Guam;

(C) to resolve conclusively all issued related to lands transferred under section 1 and without appeal to any other agency or court of law except as otherwise expressly provided by the laws of Guam; and

(D) to provide that if any portion of any real property transferred pursuant to section 1 does not remain in the ownership of the United States persons, then such portion shall revert to the commission; and

(2) determine priorities in the Legislature's discretion for the distribution of the excess lands.

(b) UNITED STATES PERSON.—(1) As used in this Act, the term "United States person" means—

(A) any citizen, national, or permanent resident alien of the United States,

(B) any partnership, corporation, or other entity organized under the laws of the United States, any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States, in which citizens, nationals, or permanent resident aliens of the United States beneficially own or control (directly or indirectly) more than 50 percent of the outstanding voting securities or other voting interest of the partnership, corporation, or other entity, or

(C) the government of any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

(2) A partnership, corporation, or other entity described in paragraph (1)(B) shall be presumed to be controlled by individuals who are citizens, nationals, or permanent resident aliens of the United States if—

(A) such individuals are a majority of the partners of the partnership or a majority of the members of the board of directors of the corporation or other entity; or

(B) such individuals have the authority to appoint a majority of the members of the board of directors of the corporation or other entity.

(c) OWNERSHIP OF UNITED STATES PERSONS OF LAND HELD IN TRUST.—For the purposes of this section, the term "ownership of United States persons" means, in the case of a portion of land held in trust, the legal and the beneficial interests of such trust must be held by United States persons.

SEC. 3. REPEAL OF CERTAIN CONDITIONS ON LAND TRANSFERRED TO GUAM.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782), as amended, is hereby repealed.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the Bill S. 2841, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

PUBLIC LAW 96-418

AN ACT To authorize certain construction at military installations for fiscal year 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Military Construction Authorization Act, 1981".

* * * * * * *

LAND CONVEYANCE, GUAM, MARIANAS ISLANDS

SEC. 818.(a)(1) Subject to subsections (b) and (c), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey, without monetary consideration, to the Government of Guam all right, title, and interest of the United States in and to the lands (or any part of the lands) described in paragraph (2), together with the improvements thereon.

(2) The lands referred to in paragraph (1) consist of approximately 927 acres of land located on Cabras Island and within the northern portion of the Apra Harbor Naval Complex, Guam, Marianas Islands, as shown and more particularly described on a map entitled "Apra Harbor Complex, Guam, Marianas Islands, Conveyance of 927 Acres of Land to the Government of Guam", on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(b)(1) Conveyance of the property described in subsection (a) shall be made at such times, and shall be subject to such terms and conditions, as the Secretary considers to be in the interest of national defense.

[(2) Conveyance of the property described in subsection (a) shall be subject to the condition that any disposal by sale or lease of any part or all of the property by the Government of Guam shall only

be for a monetary consideration equal to or in excess of the fair market value (at the time of the disposal) of the property concerned, or of the leasehold interest therein, as determined by the Administrator of General Services, and any such monetary consideration received by the Government of Guam, minus any reasonable development costs, incurred by such Government in preparing the property concerned for disposal, shall be paid to the United States. Reasonable development costs shall be a fixed standard percentage of such monetary consideration received by the Government of Guam. The fixed standard percentage shall be determined by a study, conducted by the Secretary, typical development costs required to convert comparable lands to finished developed sites, except that such percentage shall not exceed 50 percent.]

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